



KELLY A. KNIGHT, ESQ.

Kelly A. Knight has in-depth experience in matters involving employment law, including wrongful termination, discrimination, harassment, wage-and-hour, class actions, and Private Attorney General Act (PAGA) claims; all types of personal injury; professional malpractice; and business/contractual matters. He started his litigation career in a high-profile law firm representing both plaintiffs and defendants in complex business and employment matters. Kelly also gained valuable insights as a claims professional for a national carrier.

While in private practice, he successfully resolved a high-profile, complex dispute after he was sought out by community leaders to mediate based on his proven people skills and legal acumen. This kindled his passion for mediation, and he went on to join the L.A. Superior Court PI CRASH program and U.S. District court mediation panel and began privately mediating matters, gaining invaluable experience and continuing to fuel his growing enthusiasm for resolving disputes as a neutral. With an expanding record for success and growing reputation, Kelly decided to make the transition to full-time mediator.

Heralded for his quick study habits and calm demeanor, Kelly has a knack for mastering cutting-edge legal issues and utilizing a multitude of strategies and approaches to help bring closure for all parties. One attorney commented, "I've never seen a mediator as well-prepared as Kelly. He conducted a pre-mediation call and knew the facts (and the law) like the back of his hand. He arrived at the mediation with a multi-page outline, which included his own research, and that included both sides' strengths, weaknesses and pressure points. Kelly effectively used those pressure points on both sides all day long and was aggressive and tenacious."

This neutral is available only for cases involving Mediation.

MEDIATION

LEGAL CAREER & PRIOR EXPERIENCE

- Full-time Mediator at Judicate West (2018-Present)
- MSC Settlement Officer, L.A. County Superior Court CRASH Settlement Program (2017-Present)
- Panel Mediator, U.S. District Court, Central District of California (2018-Present)
- Sole Practitioner, Law Offices of Kelly A. Knight, practicing employment, personal injury, medical malpractice, business litigation, class action, and more (2009-2014; 2016-2018)
- Shareholder/Partner, The deRubertis Law Firm, APC, practicing complex employment, personal injury, class action, and more (2014-2016)
- Litigation Associate, Miller Barondess, LLP, practicing complex business litigation (2006-2009)
- Claims Professional, Liberty Mutual (2002-2003)

EDUCATION & PROFESSIONAL AFFILIATIONS

- J.D., University of Southern California (2006)
- B.A., University of California, Berkeley (1998-2002)
- Pepperdine's Straus Institute for Dispute Resolution, Mediating the Litigated Case (2018)
- Member, Southern California Mediation Association
- Member, Los Angeles County Bar Association, Labor & Employment Section (Current)
- Member, Korean American Bar Association of Southern California (2004-Current), Board of Governors (2006-2014)
- Member, Japanese American Bar Association

ADR EXPERIENCE & SPECIALTIES

All types of employment matters including class action and PAGA, wrongful termination, discrimination, harassment, retaliation, whistleblower, disability accommodations, and more; personal injury; business/contractual; real property.

HOBBIES & INTERESTS

Kelly is a fan of NBA basketball, jazz music, and strategy board gaming.

LOCATIONS

All of California



Results Beyond Dispute™

How to Make the Most Of Your Remote Mediation

PREPARE YOUR CASE AND YOUR TECHNOLOGY

- During the pandemic it is even more important to prepare and gather all evidence you need to effectively mediate (and make sure the other side has all the info you believe they need to properly evaluate)
- Send all key information to the opposing parties well in advance of the mediation
- Collaborative approaches work best
- If necessary, request a pre-mediation call to test technology
- Consider issues like joint sessions and assertiveness of the mediator
- Be open to new approaches, working collaboratively with the mediator, etc.
- Prepare your client for the process and empower them to speak freely if desired
- Prepare yourself on the substantive issues, with flexibility in the use of Zoom and technology
 - Have exhibits separately available should you authorize their exchange
 - Understand how to share documents on-screen
- Have all your participants' phone numbers available in the event technology fails
- Make sure you have planned for a method of contract execution (e.g., DocuSign)
- Notify the mediator's case manager well in advance if: (a) you need extra virtual rooms during the mediation; (b) you will have other attendees present; (c) you need any accommodations

CREATE THE BEST SETTING FOR YOUR CLIENT & SETTLEMENT POTENTIAL

- Dress for your client & possibly a joint session
 - Will your client have more confidence in you and the process if you are “suited up”? Pros say avoid “busy” clothes like plaid, best shirt color is blue; avoid skin tones
 - Since the Covid-19 outbreak, many have been out of their element and less comfortable than usual; what will make your clients and legal team more comfortable?
- Lighting matters: soft front lighting on your face is better than backlighting that produces silhouettes; remove bright lights from the background that can be distracting
- Consider what you need in your Zoom room
- Virtual backgrounds can be helpful and fun
- Don't be afraid to humanize yourself and your client with the mediator and opposing counsel--Zoom mediations offer new ways to do this

How to Make the Most Of Your Remote Mediation

CONSIDER HOW COVID-19 MIGHT INFLUENCE THE MEDIATION PROCESS

- Parties' settlement appetites and/or litigation risk tolerances might be impacted by Covid-19 related pressures or circumstances
- Litigation dates may be delayed, and trials -- particularly jury trials -- might be greatly delayed
- Witness accessibility may change due to personal demands
- Jurors' personalities and temperaments might have changed due to Covid-19
- Has delay already impacted the litigation or settlement negotiations?
- Determine well in advance if financial condition will be a factor in the negotiation

Judicate West's Best Practices for Virtual Mediation

* While Zoom seems to be the most popular option, Judicate West offers other virtual platforms such as BlueJeans and WebEx. *

TECHNOLOGY

- A. You do not need a Zoom account to connect.
 - To connect via video: you'll need access to a computer/laptop with a webcam, or at least a smartphone/tablet with its audio working.
 - Joining is as simple as clicking on a link and opening an app from Zoom.
 - Alternatively, you can also join the Zoom Pro conference by phone only with the call-in number, meeting ID, and password provided to you.
- B. Test the strength of your Wi-Fi or ethernet signal prior to the mediation to make sure there are no issues with connectivity. Make sure that the bandwidth will support the video conference if others are also using the internet.
- C. Close any other applications that use your device's camera/microphone, as it may cause issues with Zoom properly detecting equipment.
- D. Firewalls: If you are logging in to a session using a company or firm computer, a firewall may prevent you from accessing Zoom. If there is an issue in that regard, please contact your IT department for assistance prior to your scheduled mediation. As a workaround, you can use a personal computer, tablet, or smartphone.
- E. If you would like to test your device's compatibility with Zoom, visit zoom.us/test. If there are complications with your test session, please reach out to zoom@judicategwest.com to schedule a complimentary test session with us.

SECURITY AND CONFIDENTIALITY

- A. We utilize Zoom Pro and use automatically generated meeting IDs in addition to randomized passwords as enhanced security measures.
- B. We provide e-signature service via DocuSign to make the confidentiality form easier for you and your clients. Please provide your Case Manager with email addresses for ALL participants (attorneys, claims professionals, company representatives, clients, etc.) so we may forward the DocuSign enabled sign-in and confidentiality forms.
- C. Confidentiality: The virtual process is held to the same standard of mediation confidentiality as in-person sessions. Photos or recordings are forbidden.
- D. Make disclosures of any other person(s) in the room or who are listening in.

BEFORE THE MEDIATION

- A. Please provide Judicate West with:
 - The names and email addresses of all participants on your side.
 - Your cell phone number. Effective use of email or text in conjunction with video conferencing can be a big help for your mediator and can help keep you from having to sit in front of your computer for extended periods of time.
 - Return yours and your clients signed confidentiality acknowledgements that were previously sent via DocuSign.
- B. If you have a JW Client Portal Account, you can join your session directly by clicking "Join Session" on your home page. Please note, this feature is only available for attorneys and claims professionals. If you would like to register for your complimentary JW Client Portal Account, please click [HERE](#). Registration only takes a few minutes.
 - If you do not have a JW Client Portal Account, simply click on the link previously provided to you via email. Links are sent out one week prior to the mediation and again 3-days prior to your session date.
- C. Sign in to your Zoom room at least 15 minutes early to ensure everything is working properly.

DURING THE MEDIATION

- A. Do not click "leave meeting," unless you plan to exit the session completely. If you are stepping away, simply mute yourself and click "stop video," on the lower left corner of the Zoom application.
- B. If you happen to get disconnected, click on the link you were provided with to log back in.
- C. Should you need any assistance during the mediation, please email our Client Experience Team at ces@judicategwest.com.
- D. Eye contact is ideal and therefore do your best to look at the camera when speaking.

REMINDER

Just as in a live session, it is expected that all parties appear at the mediation. If your client is only appearing telephonically, it is necessary to provide advance notice in writing to all other parties and the mediator.

ADR



REAL WINS AT VIRTUAL MEDIATION

Tips for Success During Our New Normal

By *Rosemarie Chiusano-Drohan and Alex Chazen*

With numerous states across the country instituting varying stay-at-home orders and restrictions on court proceedings and travel, now is a critical time for finding new ways to resolve claims.

Virtual mediation has proven to be a successful stopgap solution to courtroom shutdowns and social distancing guidelines. While it can be a great tool, virtual mediation does take away some of the human connection element for everyone: You can't observe body language, look into someone's eyes, or shake hands when a case is

resolved. The "feel good" component of mediation is reduced, but that doesn't mean that you can't still obtain results. So, is virtual mediation effective?

TECHNOLOGY

Most video conference applications work, as long as all parties and the mediator utilize the same video platform.



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Several popular programs being used are Bluejeans, RingCentral, Zoom, and Webex. One key is to ensure that whichever software is being used, it has the ability to separate people into secure breakout rooms. This is essential to being able to maintain a bit of normalcy at mediation: The mediator can put counsel, their clients, and their claims representatives in a private room to be able to have conversations outside the presence of the other party, and outside the presence of the mediator—just like they might at an in-person mediation.

It is also advisable that counsel for each party run a test of the technology with the mediator prior to the mediation. This will allow the mediator to feel comfortable with the preparedness of counsel, and also ensure that counsel are prepared to aid their clients and claims representatives should they need help during the actual mediation sessions.

Some carriers have strict guidelines on which applications can be used and whether it is acceptable to participate by video or just audio. Claims professionals will need to check if their companies have specific rules and, if so, share them with the mediator and opposing counsel as early as possible.

Also keep in mind that mediation is necessarily a confidential process, and the addition of a third party—a software company hosting your video—adds an extra layer of potential security concerns. You want to make your mediation as secure as possible, so make sure you have an account with the hosting company that provides full access to all features, have a password for access that isn't provided to the participants until closer to the call, and utilize the waiting room to ensure that the mediator has the ability to only let in the people who belong in the mediation.

PREPARING FOR RESULTS

Before turning on the camera, think about the image you would like to portray. Dress like you would for an

Consider having a short- or long-form agreement prepared in advance with your counsel. This will ease the process of obtaining all parties' signatures and expedite the circulation of the document.

in-person mediation proceeding. Not everyone has home offices, which means we have had to create workspaces in our bedrooms, kitchens, and dens. Log in early and see what it looks like behind you on the video. Be aware of unmade beds, shining lights, or anything else that might distract viewers of your video. Zoom, for example, allows users to customize backgrounds, or you can select from the program's list of images to create virtual backgrounds, as well. Several companies and law firms have created backgrounds for this very purpose, so check with your IT department to see if this is an option.

Make sure to mute your microphone when you are not speaking to minimize background noise. Utilizing the mute button will allow you to be heard when you are speaking, but also removes the likelihood that the kids, dogs, and things like neighborhood construction noise will distract from the success of your mediation.

While virtual mediation can feel different than live mediation in a few regards, the key to success is the same: preparation. Before you start the mediation, be sure to consider these important questions to ensure your bases are covered:

- Are there any coverage issues?
- Do I need to see the plaintiff in order to assess damages?
- Do I have everything I need from opposing counsel to assess the value?
- If I need to call for additional authority, are they readily available?

In general, use your typical mediation strategies, with one caveat:

Keep in mind that when everyone is already at home, it is much easier for them to get up and leave the mediation," since all they have to do is simply click a button that says "leave meeting."

Additionally, consider asking the mediator prior to the mediation to provide you with some sort of notice prior to coming into a private breakout room. In person, a mediator would simply knock on the door, but most software options do not have a "knocking" feature. Using all of the tools available, including text messages or phone calls outside of the video mediation, will be helpful so that confidential conversations can cease before a mediator rejoins.

Also consider having a short- or long-form agreement prepared in advance with your counsel. This will ease the process of obtaining all parties' signatures and expedite the circulation of the document. The use of Adobe Pro or DocuSign in order to sign agreements during the session has also proven to be worthwhile.

Is virtual mediation a long-term solution? Not likely, as participants usually find that mediation is successful because all parties have an equal vested interest—sharing the cost and overcoming physical barriers to arrive at the bargaining table, whether it be traffic or travel. But during today's current conditions, people are flocking to virtual mediation as a short-term solution in order to keep their cases moving forward. Ultimately, it is an effective tool for all parties until the time comes when we are not required to stay six feet apart. ■

Mediation in the time of COVID-19

By Lauren Tate

I just “attended” a virtual (Zoom) webinar on online dispute resolution. The presenter began with a quote from an online proponent who essentially said, “Isn’t it great that we finally have to move to online resolution.” I tried to understand why I was having such a strong reaction, and realized that the very thing the presenter was ignoring is the very reason that in-person mediation is so effective. The presenter did not acknowledge how serious and terrifying this crisis is on a human level, that people are not just inconvenienced but actually suffering, or the fact that those of us who mediate are grieving the inability to connect with people face to face. Yes, mediation is a business, but it is the business of listening to and understanding people, what motivates them, and what drives their decisions. That is true whether the case involves a personal injury or commercial dispute. While I am successfully resolving cases through Zoom mediation, virtual connection is not, and will never be, the same as actual physical connection.

I truly believe that human connection is what really matters in life. It is what brings us love, joy, and understanding. It teaches us the power of kindness and respect. My

recent Zoom mediation sessions have all started with people talking about how they are coping, and it is evident that people want and need to talk about how hard this is in many different ways. Making that type of connection among the parties and attorneys is often what leads to a case settling; acknowledging one another’s humanity, regardless of the context of the dispute, makes it more likely that the parties will reach resolution. It is harder to “read the room” over Zoom. Some of the nuance of body language and tone are lost, and emotions and tensions are more difficult to gauge. Neither I nor an attorney can reach out over Zoom and touch the arm or back of someone who feels overwhelmed or angered by the other side’s position, to acknowledge how hard it is for them to hear, and help get them into a place where they can understand and make the best decision. In a virtual mediation, you can’t take a walk down the hall to regroup. Humor, which can effectively diffuse tension, is more difficult over Zoom.

In touting the efficacy of exchanging positions online, the presenter quoted his college-aged children as saying they would be more likely to trust information provided by an algorithm over something an attorney said to them, because there is no attorney there “sizing them up.” That speaks volumes about what is being lost by living in an increasingly virtual world. To be an effective mediator, or a successful person, I believe you need to learn to “size people up” and have someone “size you up,” and see through just the words being said. Clients tell me that what makes me such an effective mediator is that the parties and attorneys know that I am genuine, engaged, and committed to making sure

they have the information they need to make the best decision. A mediator needs to be able to “size people up” to understand what is important and why in order to resolve a case. There are so many nuances to dispute resolution that are lost online, some but not all of which come through using Zoom. While mediation skills are

In-person mediation allows for and requires looking others in the eye and communicating in a way that is difficult to capture online.

obviously important, the key to resolving a case is almost always figuring out and acknowledging the humanity behind the dispute – suffering, financial loss, betrayal, distrust, and security. In-person mediation allows for and requires looking others in the eye and communicating in a way that is difficult to capture online.

Virtual connection is not the same as real, physical connection. There are many who prefer mediating over a platform like Zoom. That risks creating an unlevel playing field for those who are not comfortable with technology and mediators need to watch for that in maintaining neutrality and power balance. While I am comfortable with both, for those who, like me, prefer in-person mediation, I urge you to try Zoom as it is the next best thing, and is truly working well. However, I do look forward to the time when we can all get back together the old fashioned way, handshakes and all. ■



Lauren Tate has been mediating medical malpractice, personal injury, commercial and real estate cases since 2012. She is particularly skilled at maintaining control of negotiations and reaching settlements in emotionally charged cases.

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How To Make Remote Mediation Work For Your Cases

by Rachel Erlich

Mediation is a powerful tool that moves cases along the resolution spectrum. Over the past 30 years, in the mediation of tort, employment, and other cases that SFTLA members typically handle, we've been acculturated to expect that parties, lawyers, and insurers (if any) will get together with the mediator on a particular day and resolve the case.

Reinforcing expectations that mediation will be in person are State, Federal, and Local Rules such as California Rule of Court 3.894 that provides:

Attendance

1. All parties and attorneys of record must attend all mediation sessions in person unless excused or permitted to attend by telephone as provided in (3). If a party is not a natural person, a representative of that party with authority to resolve the dispute or, in the case of a governmental entity that requires an agreement to be approved by an elected official or a legislative body, a representative with authority to recommend such agreement, must attend all mediation sessions in person, unless excused or permitted to attend by telephone as provided in (3).
2. If any party is insured under a policy of insurance that provides or may provide coverage for a claim that is a subject of the action, a representative of the insurer with authority to settle or recommend settlement of the claim must attend all mediation sessions in person, unless excused or permitted to attend by telephone as provided in (3).
3. The mediator may excuse a party, attorney, or representative from the requirement to attend a mediation session under (1) or (2) or permit attendance by telephone. The party, attorney, or representative who is excused or permitted to attend by telephone must promptly send a letter or an electronic communication to the mediator and to all parties confirming the excuse or permission.
4. Each party may have counsel present at all mediation sessions that concern the party.

The Federal District Court for the Northern District ADR Rule 6-10 provides as summarized by the Court itself:

Attendance:

The following individuals are required to attend the mediation session in person:

- clients with settlement authority and knowledge of the facts
- the lead trial attorney for each party
- insurers of parties, if their agreement would be necessary to achieve a settlement

Requests to permit attendance by phone rather than in person, which will be granted only under extraordinary circumstances, may be made to the ADR Magistrate Judge. Clients are strongly encouraged to participate actively in the mediation. (See ADR Rule 6-10 for full rule).

In the final weeks before "shelter in place" orders went into effect people attended mediation in person with trepidation. Every cough resulted in wary looks from people nearby and assurances from the cougher, "I don't have COVID-19," or, "It's just allergies." Before quarantine, mediation participants were asking for help brokering having parties who were at risk attend remotely and some people who were sick asked to attend remotely.

People were asking, "Rachel, can you do remote mediation?" On March 16, 2020, I did my first Pandemic-related, entirely remote attendance mediation session, in which most people were on video and just a couple of defendants were by phone – all mostly from home. During that day, shelter-in-place ("quarantine") orders began issuing for Bay Area counties, we were experiencing the new normal for mediation as we were doing it.

Since that day, it is apparent that not everyone is comfortable with the idea of remote mediation. So, here are some things to make you more comfortable with it so that during the pandemic you are not deprived of the powerful resolution tool in your cases. First, know that feedback has been very positive for all of the remote mediations that I and others have conducted (the mediators who have received complaints will either adjust or will be available for in person again in the



Rachel Erlich A mediator of civil disputes in California and across the country, Rachel is based in the Bay Area and affiliated with Judicate West. She mediates insurance coverage and bad faith, personal injury, and real estate (including financing, purchases/disclosures, construction and landlord-tenant). Rachel mediates in Superior Court and Federal Court programs.

future). Second, remote mediation does not necessarily mean that mediation will be conducted by video on just one day, and that the case will settle on the day of mediation. Third, remote mediation requires a bit of adjusting to a new normal on timing, pacing, and modes of communication.

Remote Mediation - What is it?

Most people hear “remote mediation” and think, “video.” Remote mediation may include video but it leverages all communication modes available – video, phone, e-mail, text, and electronic transmission of documents, videos, and photos via secure portals.

Video mediation can use a number of different video-conferencing platforms. Many mediators are using Zoom, even those who previously used others such as Court Call or Skype. While Zoom has gotten some bad press recently and made people wary of it, the company itself is tightening security. There are measures that most mediators implemented immediately upon switching to video-mediation (waiting room, breakout rooms, recording and chat are disabled, and each mediation has a unique meeting ID with password). Using these safeguards, March 16 we went all day just as we might have done had we all been together in one office suite. At one point we needed to have all three defense rooms together, this was accomplished in far less time than we would have in person. I had another all video mediation that went more than twelve hours and concluded with a fully executed long form agreement that needed to be signed by six parties and their lawyers. In this regard, the plaintiffs’ bar is ahead because many of you have implemented DocuSign.

Practical things to expect in video. Expect that you will use text during mediation to communicate with the mediator, and possibly your client. At some point someone will have to leave the conference and return, this means that if your mediator is using a waiting room and breakout rooms the person who left will need to be readmitted from the waiting room and will have to be reassigned to their breakout room. If your mediator is using multiple video conferences then the waiting room may not be an issue but there will be other limitations. Audio quality seems to be best when using computer/device for audio. Have a work around planned if audio or internet connection speeds are poor – most mediators can help you with this and will pivot quickly. Mediators have different styles in how they let you know that they are coming into your private breakout room.

Expectations for the Process. You can reasonably expect everything that you would expect from the process in person. Party emotional needs can be met by a mediator who is skilled in video-conferencing, the opportunity to meet the other side can be done by a mediator who is adroit in using the technology and setting the table for such a meeting. If participants agree to have the mediation session happen over the course of days or weeks instead of all at once then the process may include a variety of technology including video, telephone, e-mail, and text. Regardless of whether you are using video or phone please do include the mediator in communications with your client throughout the process. Also let your client know that there will be times when the mediator communicates with you separately – certainly by text or e-mail and possibly in another



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video breakout room.

Practical things to expect in a non-video process. If all have agreed to proceed telephonically, consider whether you want to have those communications occur entirely on one day or whether it might be more practical to work toward your mediation day with a goal of getting the case settled before “The Day.”

Preparatory Communications with Mediator and Clients. As with in person mediation, preparing for mediation is important. Including your mediator in those conversations early will give you a chance to learn and assess how adroit your mediator is in handling remote mediations. Getting people to commit to the process, to think about the logistics of mediation in the context of their household. Not everyone has space dedicated to a home office so people have done mediation from bedrooms and even closets. How the mediator works with you and your client on this non-technical but key rapport-building issue may set the stage for whether video or audio only communication is better.

Practice with the Technology. Download the application for your device more than a day before your first mediation using that technology. Guide your client through downloading the application too. Practice with your client so that you know that your client understands how it will be used on the game day.

The good news is that the days of defendants saying they and

their insurance people must be, “on standby,” are over. Years of experience in mediation have taught us that having the decision-maker’s direct participation (whether in person or remotely) makes a deal more likely. Insurance carriers are noticing the benefit of having the insurance claims professional be part of the mediation session throughout, even when not physically with the defense attorneys. This is due to hearing the progress of negotiations as they occur which benefits the defense just as it benefits the decision-makers on the plaintiff’s side. A big driver for carriers to not send people to mediation is the productivity cost of having a claims professional away from the desk for a full day or days. Obviously, remote participation reduces this lowered productivity (right now, while people are dealing with lack of childcare and the chaos of multiple people being at home there are other reasons that claims professionals are not participating throughout the day). The cost-savings to insurers of not putting a person on a plane have also always been part of the carrier’s decision-making. These factors can be addressed through remote mediation while getting the benefit of the decision-maker’s participation. This makes it likely that we will see carriers participate remotely even after quarantine ends.

The pandemic has brought participants to Mediation 2.0 a bit sooner than some might have liked. We do not have to use the wholly remote approach forever. Once we are no longer forced to be remote, we can design our processes in a way that works for everyone. The past two months have proven that full participation by everyone is possible just by leveraging technology that allows remote access using a device that fits in the palm of your hand. ■

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